

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JEFFREY L. DRYDEN,

Plaintiff,

v.

ANDREA BAREFIELD,

Defendant.

Case No. 2:13-cv-01896-RCJ-PAL

ORDER

(Mtn to Clarify – Dkt. #19)

This matter is before the court on Defendant Andrea Barefield's Motion for Clarification, or In the Alternative, Motion for Enlargement of Time to File a Responsive Pleading to Plaintiff's Second Amended Complaint (Dkt. #19) filed January 16, 2015. The court has considered the Motion.

Plaintiff Jeffrey Dryden is proceeding in this matter pro se. Plaintiff requested and was granted leave to proceed in forma pauperis in an Order (Dkt. #2) entered May 28, 2015. The court screened Plaintiff's Complaint (Dkt. #3), found Plaintiff had not stated a claim upon which relief could be granted, and allowed Plaintiff leave to file an amended complaint. Plaintiff filed two Amended Complaints (Dkt. ##4, 5), and the court screened the second-filed Amended Complaint (Dkt. #5)<sup>1</sup> because it was more detailed. The court entered a Report of Findings and Recommendation (Dkt. #6) on October 23, 2014, finding Plaintiff had stated a procedural due process claim against Defendant in her individual capacity. The court recommended dismissal of the remainder of the claims in the Amended Complaint.

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<sup>1</sup> For clarity, the court will refer to the Amended Complaint (Dkt. #5) it screened as the Amended Complaint.

1 Plaintiff filed an Objection (Dkt. #8) to the R&R, and while it was pending before the  
 2 district judge, Defendant filed a Motion to Dismiss (Dkt. #11) the Amended Complaint. Plaintiff  
 3 has not responded to the Motion to Dismiss, despite receiving an extension of time to do so. *See*  
 4 Order (Dkt. #15). On January 2, 2015, the district judge entered an Order (Dkt. #14) accepting  
 5 and adopting the R&R. On January 8, 2015, Plaintiff filed a Second Amended Complaint  
 6 (“SAC”) (Dkt. #17) without leave of court.

7 Defendant seeks an order clarifying the procedural posture of this case, or alternatively,  
 8 granting an extension of time to respond to the SAC. The operative pleading in this matter is the  
 9 Amended Complaint (Dkt. #5). Plaintiff filed the SAC in contravention of Rule 15 of the  
 10 Federal Rules of Civil Procedure, which provides that a party may amend its pleading *once* as a  
 11 matter of course within either (a) twenty-one days after serving it; or (b) twenty-one days after  
 12 service of the responsive pleading. Fed. R. Civ. P. 15(a)(1). In all other cases, a party may only  
 13 amend its pleading with the opposing party’s written consent or with leave of court. Fed. R. Civ.  
 14 P. 15(a)(2). Here, Plaintiff amended his pleading once as a matter of course when he filed the  
 15 Amended Complaint (Dkt. #5). The SAC was filed without leave of court or Defendant’s  
 16 written consent.

17 Accordingly,

18 **IT IS ORDERED:**

- 19 1. Defendant’s Motion for Clarification (Dkt. #19) is GRANTED to the extent that
- 20 the court has now clarified the procedural posture of this case.
- 21 2. The Clerk of Court shall STRIKE the Second Amended Complaint (Dkt. #17).

22 Dated this 28th day of January, 2015.

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 25 PEGGY A. LEEN  
 26 UNITED STATES MAGISTRATE JUDGE  
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